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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,473	01/29/2001	Michel Philippe	05725.0834	6832

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EXAMINER

BADIO, BARBARA P

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/770,473

Applicant(s)

PHILIPPE ET AL.

Examiner

Barbara P. Badio, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 4-59 is/are pending in the application.  
4a) Of the above claim(s) 31-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**First Office Action on the Merits of a RCE**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 8, 2005 has been entered.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Status of the Application***

3. Claims 1 and 4-59 are pending in the present application. Claims 31-59 stand withdrawn from further consideration as being drawn to a nonelected invention. Claims 1 and 4-30 stand rejected as indicated below.

***Claim Rejections - 35 USC § 112***

4. The rejection of claims 2 and 3 under 35 USC 112, first paragraph is made moot by the cancellation of the instant claims.

**5. The rejection of claims 1 and 4-30 under 35 USC 112, first paragraph is withdrawn.**

***Claim Rejections - 35 USC § 112***

**6. The following is a quotation of the second paragraph of 35 U.S.C. 112:**

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**7. Claims 1 and 4-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

The instant claims recite treatment of "dermatological disorders associated with seborrhea and dermatological disorders associated with microorganisms chosen from *Propionibacterium acnes* and *Propionibacterium granulosum*". Apart from "acne and hyperseborrhoea" as disclosed by the present specification, it is unclear what other dermatological disorders are associated with "seborrhea" and/or "*Propionibacterium acnes* and *Propionibacterium granulosum*". Thus, the metes and bound of the claimed invention is indefinite.

***Claim Rejections - 35 USC § 102***

**8. The rejection of claims 2 and 3 under 35 USC 102(e) over Thunemann (US 6,395,284) as evidenced by Aldrich (1996-1997) is made moot by the cancellation of the instant claims.**

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**9. The rejection of claims 1, 4-10, 12-15, 25-27 and 30 under 35 USC 102(e) over Thunemann (US 6,395,284) as evidenced by Aldrich (1996-1997) is maintained.**

Applicant argument is that the reference identifies vitamin A as the “pharmacological active substance” whereas the instant claims define the “polyamino acid derivatives of formula (I) and salts thereof” as the only active anti-seborrhoeic or anti-acne agent. Therefore, according to applicant, the prior art composition is outside the scope of the present invention. Applicant’s argument was considered but not persuasive for the following reason.

According to the present specification, vitamins, including retinol (i.e., vitamin A), are not considered anti-seborrhoeic agents and, thus, are useful in the presently claimed composition (see especially sections 0059-0060 of the present specification). Thus, the prior art composition containing vitamin A and a polyamino acid as defined by the instant claims meet the limitations of the instant claims and, therefore, is encompassed by the instant invention.

For this reason and those given in previous Office Actions, the rejection of claims 1, 4-10, 12-15, 25-27 and 30 under 35 USC 102(e) over Thunemann (US 6,395,284) as evidenced by Aldrich (1996-1997) is maintained.


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***Telephone Inquiry***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara P. Badio, Ph.D. whose telephone number is 571-272-0609. The examiner can normally be reached on M-F from 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Barbara P. Badio, Ph.D.  
Primary Examiner  
Art Unit 1617

BB  
January 17, 2006